

In the  
**Supreme Court of the United States**  
October Term, 1939

Ex Parte:

In the Matter of Wallace S.  
Bransford as County Treas-  
urer of Pima County, Ari-  
zona, and ex-officio Tax Col-  
lector:

ORIGINAL

No. ....

MOTION FOR LEAVE TO FILE PETITION FOR  
MANDAMUS ACCOMPANIED BY PETITION FOR  
MANDAMUS

**J. MERCER JOHNSON**

County Attorney of Pima County, Arizona  
Tucson, Arizona.

**GERALD JONES**

303-6 Valley National Building,  
Tucson, Arizona.

*Attorneys for Petitioner.*

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Now comes Wallace S. Bransford, County Treasurer of Pima County, Arizona, and ex-officio Tax Collector, by J. Mercer Johnson, County Attorney of Pima County, Arizona, and Gerald Jones, his attorneys, and moves the Court for leave to file the petition for mandamus printed herewith to compel Honorable David W. Ling, Judge of the United States District Court for the District of Arizona, and the United States District Court for the District of Arizona, to call two additional judges pursuant to the provisions of Section 266 of the Judicial Code, Title 28, U. S. C. A., Section 380, to hear an application for an interlocutory injunction in a certain action pending in said court wherein Valley National Bank of Phoenix, Arizona, is plaintiff, and your petitioner and others are defendants, number

E-333 on the records and files of said court, a copy of the Second Amended and Supplemental Bill of Complaint in said cause being appended to said petition for mandamus.

Dated January 26, 1940.

**WALLACE S. BRANSFORD**  
County Treasurer of Pima County,  
Arizona.

**Petitioner**

**J. MERCER JOHNSON**  
County Attorney of Pima County,  
Arizona.

**Address: Tucson, Arizona**

**GERALD JONES**  
**Address: 303-6 Valley National**  
**Building,**  
**Tucson, Arizona**

**Attorneys for Petitioner**

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ORIGINAL

No. ....

PETITION FOR  
WRIT OF  
MANDAMUS

To the Honorable, Charles Evans Hughes, Chief Justice, and the Associate Justices of the Supreme Court of the United States:

The petition of Wallace S. Bransford as County Treasurer of Pima County, State of Arizona, and ex-officio Tax Collector, respectfully shows:

(1) That on or about October 23, 1935 a bill in equity was filed in the clerk's office of the District Court of the United States for the District of Arizona by the Valley National Bank of Phoenix, Arizona, a national banking association, against your petitioner's predecessor in office as such county treasurer and others as defendants, and summons therein was served upon the defendants.



(2) That said defendants did appear in said cause and certain proceedings were taken therein, and thereafter and on April 24, 1939 the plaintiff in said action did file its Second Amended and Supplemental Bill of Complaint, a copy whereof being appended as an exhibit to this petition, and your petitioner, as County Treasurer and Tax Collector aforesaid, was duly substituted for petitioner's predecessor in said office.

(3) That the plaintiff in said action in connection with its said Second and Supplemental Bill of Complaint did make application for an interlocutory injunction to restrain your petitioner and all defendants from the collection of taxes levied for state and local purposes for the year 1935 against the shares of stock held by the shareholders in the plaintiff on the ground, among others, that the said levies were in violation of the plaintiff's rights under the Constitution and laws of the United States.

(4) That the interlocutory injunction sought by the plaintiff would, if granted, suspend and restrain the enforcement, operation and execution of the statutes of the State of Arizona, and, in particular, Section 3071 of the 1928 Revised Code of Arizona, and especially the last sentence thereof, by restraining the action of an officer of the State of Arizona, to-wit, your petitioner, and other defendants, in the enforcement and execution of such statute, on the ground of the unconstitutionality thereof.

(5) That your petitioner, and the other defendants,

believing that said application for an interlocutory injunction presented a cause falling within the terms of Section 266 of the Judicial Code, Title 28, U. S. C. A., Section 380, did apply to the Honorable David W. Ling, Judge of said District Court, that he call to his assistance to hear and determine said application two other judges in conformity with said section; that after hearing upon defendants' application, and on November 9, 1939, the said Judge and Court did rule that the plaintiff's application for a temporary and interlocutory injunction was not a matter for consideration by a three judge court under said section and did indicate that he would, sitting alone, hear plaintiff's said application.

(6) That as your petitioner is informed and believes and therefore avers neither your petitioner nor any of the said defendants will have an appeal to this court from any judgment or order of said district court if but a single judge presides for the reason that such an appeal lies only where a three judge court is established pursuant to said section; that your petitioner is informed and believes and therefore avers that no appeal will lie to the Circuit Court of Appeals for the Ninth Circuit from any such order or judgment for the reason that under said section of the Judicial Code a three judge court should be formed and a single judge court has no jurisdiction to proceed.

(7) That your petitioner is without adequate relief otherwise than through this petition.

WHEREFORE, your petitioner prays that a rule be made and issued from this Honorable Court directed to the Honorable David W. Ling, Judge of the United States District Court for the District of Arizona, and directing the said District Court of the United States for the District of Arizona, to show cause why a writ of mandamus should not issue commanding the said judge and the said court, and each of them, to call to the assistance of the said judge, Honorable David W. Ling, two other judges to hear and determine said application for an interlocutory injunction and other proceedings in said cause, and why your petitioner should not have such other and further relief as may be just and meet.

**WALLACE S. BRANSFORD**

County Treasurer of Pima County,  
Arizona, and ex-officio Tax Col-  
lector.

Petitioner

**J. MERCER JOHNSON**

County Attorney of Pima County,  
Arizona.

Address: Tucson, Arizona.

**GERALD JONES**

Address: 303-6 Valley National  
Building,

Tucson, Arizona.

Attorneys for Petitioner

STATE OF ARIZONA ( )  
 COUNTY OF PIMA ( ) ss.

Wallace S. Bransford, being first duly sworn, deposes and says: That he is County Treasurer of Pima County, Arizona, and ex-officio Tax Collector charged with the duty of collecting state and local taxes; that he is a party to the action in the United States District Court for the District of Arizona referred to in the foregoing petition; that he has read the foregoing petition and knows its contents and that the said petition is true in substance and in fact.

WALLACE S. BRANSFORD

Subscribed and sworn to before me this 26th day of January, 1940.

My commission expires March 16, 1942.

CHARLES E. CONNER

Notary Public, Pima County, Arizona.

.(Seal of Notary)



## EXHIBIT

In the District Court of the United States  
for the District of Arizona

THE VALLEY NATIONAL  
BANK, OF PHOENIX,

Plaintiff,

vs.

MARICOPA COUNTY,  
ARIZONA;

HARRY M. MOORE, as  
County Treasurer and Ex-  
Officio Tax Collector of Mar-  
icopa County, Arizona;

J. D. BRUSH, as County Asses-  
sor of Maricopa County, Ari-  
zona;

C. W. PETERSON,

JOHN A. FOOTE and

GEO. FRYE, as Members of  
and constituting the Board of  
Supervisors and County  
Board of Equalization of  
Maricopa County, Arizona;

PIMA COUNTY, ARIZONA:

WALLACE S. BRANSFORD,  
as County Treasurer and Ex-  
Officio Tax Collector of Pima  
County, Arizona;

No. E-333

Phoenix

SECOND  
AMENDED  
AND  
SUPPLEMENTAL  
BILL OF  
COMPLAINT.

(For Injunction  
Against Collection of  
Taxes)

CHARLES M. TAYLOR, as  
County Assessor of Pima  
County, Arizona;

THOMAS COLLINS,

R. H. MARTIN, and

J. B. MEAD, as Members of  
and Constituting the Board of  
Supervisors and County  
Board of Equalization of  
Pima County, Arizona;

GRAHAM COUNTY,  
ARIZONA;

CHARLES M. GEITZ, as  
County Treasurer and Ex-  
Officio Tax Collector of Grah-  
am County, Arizona;

ALVIN GOODMAN, as County  
Assessor of Graham County,  
Arizona;

J. W. GREENHALGH,

GLEN HOOPES, and

VIRGIL McEUEEN, as Mem-  
bers of and Constituting the  
Board of Supervisors and  
County Board of Equaliza-  
tion of Graham County, Ari-  
zona;

MOHAVE COUNTY,  
ARIZONA;

C. B. TATUM, as County  
Treasurer and Ex-Officio Tax  
Collector of Mohave County,  
Arizona;

W. O. RUGGLES, as County  
Assessor of Mohave County,  
Arizona;

F. L. HUNT,  
W. D. LAWE, and

E. T. LYONS, as Members of  
and Constituting the Board of  
Supervisors and County  
Board of Equalization of  
Mohave County, Arizona;

FRANK LUKE,  
THAD M. MOORE, and

D. C. O'NEIL, as Members of  
and Constituting the State  
Tax Commission and the  
State Board of Equalization  
of the State of Arizona,

Defendants.

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Comes now the above named plaintiff, and for its  
Second Amended and Supplemental Bill of Complaint  
against the above named defendants, alleges:

I.

That plaintiff is, and was at all times herein mentioned, a corporation, duly incorporated as a national banking association under the laws of the United States of America, and authorized to do a banking business in the State of Arizona, having its principal banking house at Phoenix, Maricopa County, Arizona, and branches in other cities and towns in the County of Maricopa, and in cities and towns in the counties of Pima, Graham, Mohave, Gila, Greenlee, Pinal and Yavapai.



That plaintiff brings this suit in its own behalf and in behalf and as the agent of the holders of its common stock.

That the defendants, Maricopa County, Pima County, Graham County, and Mohave County, each are and at all times herein mentioned, were duly organized and existing counties of the state of Arizona, and political subdivisions of said state;

That Harry M. Moore is a citizen and resident of Maricopa County, Arizona, and at the time of the filing of the original complaint in this cause, was the duly elected, qualified and acting County Treasurer and Ex Officio Tax Collector of said county; that since the filing of said original complaint he has been succeeded in said office by Ed. Oglesby, a citizen and resident of said Maricopa County, and that said Ed. Oglesby is now the duly elected, qualified and acting County Treasurer and Ex Officio Tax Collector of Maricopa County, and is sued herein as such officer, having been duly substituted as a party defendant in place of the said Harry M. Moore;

That the defendant, J. D. Brush, is a citizen and resident of Maricopa County, Arizona, and is the duly elected, qualified and acting County Assessor of said County, and is sued herein as such officer;

That the defendants C. W. Peterson, John A. Foote and Geo. Frye, are citizens and residents of Maricopa County, Arizona, and are now and at all times herein mentioned were the duly elected, qualified and acting members of and have constituted and do now constitute

the Board of Supervisors of said Maricopa County and the County Board of Equalization of said county;

That Daniel E. Garvey is a citizen and resident of Pima County, Arizona, and at the time of the filing of the original complaint in this cause, was the duly elected, qualified and acting County Treasurer and Ex Officio Tax Collector of said county, that since the filing of said original complaint, Wallace Bransford, a citizen and resident of Pima County, Arizona, has succeeded said Daniel E. Garvey as County Treasurer and Ex Officio Tax Collector of said county, and is sued herein as such officer, having been legally substituted as a party defendant in said cause in place of the said Daniel E. Garvey;

That the defendant Charles M. Taylor, is a citizen and resident of Pima County, Arizona, and is the duly elected, qualified and acting County Assessor of said county, and is sued herein as such officer.

That Warren A. Grossetta, R. H. Martin and J. B. Mead are citizens and residents of Pima County, Arizona, and at the time of the filing of the original complaint in this cause, were the duly elected, qualified and acting members of the Board of Supervisors of said Pima County and the Board of Equalization of said county;

That since the filing of the original complaint in this cause, Thomas Collins, a citizen and resident of Pima County, Arizona, has been duly elected a member of the Board of Supervisors of Pima County, Arizona, to succeed Warren A. Grossetta, and that said Thomas Col-

lins, R. H. Martin and J. B. Mead do now constitute the Board of Supervisors of Pima County, Arizona, and are sued herein as such officers, the said Thomas Collins having been substituted as a party defendant in place of Warren A. Grossetta;

That Charles M. Geitz was a citizen and resident of Graham County, Arizona, and was the duly elected, qualified and Acting County Treasurer and Ex Officio Tax Collector of said county at the time of the filing of the original complaint in this cause; that since the filing of the original complaint in this cause Earl M. Lines has succeeded the said Charles M. Geitz as the duly elected, qualified and acting County Treasurer and Ex Officio Tax Collector of said county and is sued herein as such officer, having been substituted as a party defendant in place of said Charles M. Geitz;

That the defendant, Alvin Goodman, is a citizen and resident of Graham County, Arizona, and is the duly elected, qualified and acting County Assessor of said county, and is sued herein as such officer;

That J. W. Greenhalgh, Glen Hoopes and Virgil McEuen, are citizens and residents of Graham County, Arizona, and at the time of the filing of the original complaint in this cause, were the duly elected, qualified and acting members of and constituted the Board of Supervisors of said Graham County, and the County Board of Equalization of said county;

That since the filing of the original complaint in this cause, Ernest D. Householder and M. E. Dubois, citizens and residents of Graham County, Arizona, have

succeeded J. W. Greenhalgh and Virgil McEuen as members of the Board of Supervisors of said Graham County, and the said Glen Hoopes, Ernest D. Householder and M. E. Dubois now constitute the Board of Supervisors of said Graham County and the Board of Equalization of said county, and are sued herein as such officers, the said Ernest D. Householder and M. E. Dubois having been substituted as parties defendant in the place of J. W. Greenhalgh and Virgil McEuen;

That C. B. Tatum is a citizen and resident of Mohave County, Arizona, and at the time of the filing of the original complaint in this cause was the duly elected, qualified and acting County Treasurer and Ex Officio Tax Collector of said county; that since the filing of said original complaint he has been succeeded in said office by A. M. Cook, a citizen and resident of Mohave County, and that said A. M. Cook is now the duly elected, qualified and acting County Treasurer and Ex Officio Tax Collector of Mohave County, Arizona; and is sued herein as such officer, having been duly substituted as a party defendant in the place of said C. B. Tatum;

That the defendant, W. O. Ruggles is a citizen and resident of Mohave County, Arizona, and is the duly elected, qualified and acting County Assessor of said county, and is sued herein as such officer;

That the defendants, F. L. Hunt, W. D. Lawe and E. T. Lyons are citizens and residents of Mohave County, Arizona, and at the time of the filing of the original complaint in this cause were the duly elected,

qualified and acting members of the Board of Supervisors of said Mohave County, and the Board of Equalization of said county; that since the filing of the original complaint in this cause, William Mackie and George F. Moser, each a citizen and resident of Mohave County, Arizona, have been duly elected members of the Board of Supervisors of Mohave County, Arizona, to succeed F. L. Hunt and E. T. Lyons, and that said W. D. Lawe, William Mackie and George F. Moser, do now constitute the Board of Supervisors of Mohave County, Arizona, and are sued herein as such officers, the said William Mackie and George F. Moser having been substituted as parties defendant in place of F. L. Hunt and E. T. Lyons.

That the defendants, Frank Luke, Thad M. Moore and D. C. O'Neil are residents of Maricopa County, Arizona, and are now and at all times herein mentioned have been the duly elected, qualified and acting members of and have constituted, and do now constitute the State Tax Commission and State Board of Equalization of the State of Arizona.

## II.

That this is a suit of a civil nature, in equity, arising under the Constitution and laws of the United States, and that the amount involved herein, exclusive of interest and costs, exceeds the sum or value of Three Thousand (\$3,000.00) Dollars.

## III.

That the plaintiff now exercises, and from and since the 11th day of February, 1935, has exercised in the City of Phoenix, and the Cities of Glendale and Mesa, in Maricopa County, Arizona, in the city of Tucson, and the town of Ajo, in Pima County, Arizona, in the town of Safford, Graham County, Arizona, in the city of Kingman, Mohave County, Arizona, and in the cities of Globe and Miami, and town of Hayden, in Gila County, Arizona, in the town of Clifton, Greenlee County, Arizona, in the towns of Superior, Coolidge and Casa Grande, in Pinal County, Arizona, and in the city of Prescott, Yavapai County, Arizona, normal banking powers conferred upon it by law as a national association, including the receiving of commercial deposits, demand and time saving deposits, evidenced by certificates of deposit, the purchase and sale of government, state and municipal bonds, the maintenance of a trust department, the purchase and discount of commercial paper, the loaning of money on financial statements, and upon collateral security, and upon real estate and chattel mortgages executed to the plaintiff or assigned to and deposited with it as collateral security, and the investment of money in notes, bonds and mortgages and other securities, and evidences of indebtedness.

## IV.

That it was and is provided by Section 1, of Article IX of the Constitution of the State of Arizona, that all



taxes shall be uniform upon the same class of property within the territorial limits of the authority levying the tax.

That it was and is provided by Section 2, of Article IX of the Constitution of the State of Arizona, that there shall be exempt from taxation all federal, state, county and municipal property.

That it was and is provided by Section 3068, Revised Code of Arizona for 1928, that all taxable property within said state must be assessed at its full cash value, and that the term, "full cash value" shall mean the price for which property would sell if voluntarily offered for sale by the owner thereof upon such terms as such property is usually sold, and not the price that might be realized if such property were sold at a forced sale.

That it was and is provided by Section 3069 Revised Code of Arizona for 1928, as amended by Chapter 110, Session Laws of Arizona for 1931, that the property of corporations shall be assessed and taxed, and no assessment shall be made on shares of stock of corporations, nor shall any holder thereof be taxed for such shares, but that said provisions with reference to the taxing of shares of stock shall not apply to banking corporations, building and loan associations or corporations, and corporations or associations engaged in the business of using money wherewith to make money for the owners of their shares, and that the shares of stock of such banking corporations, and other corporations and associations shall be assessed and taxed as other property

in the name of the shareholders of the several shares thereof, to be entered and taxed in the name of and be payable by such corporation or association.

## V.

That it was and is provided by Section 11, of Article IX of the Constitution of Arizona, that the manner, method and mode of assessing, equalizing, and levying taxes in the State of Arizona, shall be such as may be prescribed by law.

That it was and is provided by Section 3074, Revised Code of Arizona, 1928, that between the first Monday in January, and the first day of May, of each year, the County Assessor, (except as otherwise required by the State Tax Commission) shall ascertain by diligent inquiry and examination all property in his county subject to taxation, the names of all persons owning, claiming, or having possession or control thereof, determine the full cash value of all such property, and list and assess the same to the person owning, claiming or having the possession, charge, or control thereof.

That it was and is provided by Section 3070, Revised Code of Arizona for 1928, that upon the demand of the Assessor the officers in charge of any banking corporation or corporations or association engaged in the business of using money wherewith to make money, shall make out and deliver to the assessor a sworn statement showing the number of shares, the name and residence of each shareholder, and the number of shares



owned by him, the surplus, reserve fund and undivided profits, and the par and market value of the shares, and that the full cash value of such shares shall be ascertained according to the best information which the assessor may be able to obtain, whether from any return to any officer of the state or the United States, from actual sales of the stock, or from other trustworthy sources, and that every such shareholder shall, where such corporation or association is located, render at their full cash value to the assessor all shares owned by him therein, and if the shareholder fail to do so the assessor shall list and assess such unrendered shares as other unrendered property, and that the taxes due thereon shall be paid by such corporation or association, and shall be a lien against and assessed to such shares of stock, and no such corporation or association shall pay any dividends to any shareholder who is in default in the payment of taxes due on his shares, nor shall it permit the transfer on its books of any shares the owner of which is in default in the payment of his taxes on the same.

That it was and is provided by Section 3071, Revised Code of Arizona for 1928, that every such corporation or association for the purpose of said assessment shall be considered as located in every county, city or town wherein it has an office for the purpose of carrying on its business, and the shares shall be subject to taxation in any county, city or town wherein it has such office, that the officer of such corporation or association shall state in his statement if his association or corporation

is subject to taxation in more than one county, city or town, and the proportion of its assets situated in each thereof, and that the shares of such corporation or association shall be taxed in each county, city or town, for only such portion of their assets as the assets situated in that county, city or town bear to the assets of the entire corporation or association, and that when a bank maintains branches or conducts business in more than one county, city or town, the assessed value of the capital stock shall be apportioned among the several counties, cities and towns in which the main office or such branches are maintained or business conducted, and the amount apportioned to each county, city or town shall not be less than the actual cash value of the real and personal property of such bank situated in such county, city or town.

## VI.

That on the 11th day of February, 1935, the day plaintiff engaged in the banking business as a national bank, and at all times thereafter until after the first Monday in May, 1935, the amount of its capital stock was \$260,000.00, its surplus was \$260,000.00, its undivided profits were \$90,026.52, and its resources \$89,000.00, making a total as the basis for the valuation of its shares of common capital stock of \$699,026.52. That its common capital stock consisted of 52,000 shares, of the par value of \$5.00 each. That to provide the plaintiff with sufficient capital to enable it to comply with the laws and regulations pertaining to national

banks in the acquisition and transaction of the banking business which it acquired on said 11th day of February, 1935, the Reconstruction Finance Corporation of the United States of America, purchased from the plaintiff, and the plaintiff sold to said Reconstruction Finance Corporation, \$1,240,000.00 par value of preferred stock. That said preferred stock so issued and sold to said Reconstruction Finance Corporation consisted of 198,400 shares of the par value of \$6.25 each, and that all of said preferred stock was issued to said Reconstruction Finance Corporation, and said Reconstruction Finance Corporation paid to plaintiff therefor the par value thereof, on or prior to said 11th day of February, 1935, and ever since the issuance thereof said preferred stock has been and now is owned and held by and is the property of the Reconstruction Finance Corporation of the United States of America.

## VII.

That after the 11th day of February, 1935, and prior to the first day of May, 1935, an officer of the plaintiff, duly authorized for said purpose, made and delivered a statement such as is provided for by Sections 3070 and 3071, Revised Code of Arizona for 1928, to each of the assessors of the respective counties in which its main office or any of its branches was and is situated, including all of the counties made parties defendant to this suit. That each of said statements showed the number of plaintiff's shares, the names and residences of each shareholder owning and holding the shares of

its common stock and the shares of its preferred stock above mentioned, the number of shares owned by each shareholder, the amount of capital, surplus and undivided profits, as above stated, and the par value of its shares, both common and preferred, as is required by Section 3071, Revised Code of Arizona, 1928. Each of said statements showed the proportion of plaintiff's assets situated in each of the counties in which its principal office or a branch thereof was and is situated. That said statement showed the common capital stock of the plaintiff was \$260,000.00, that its surplus was \$260,000.00, that its undivided profits were \$90,026.52, and that its reserves were \$89,000.00, making a total as the basis for the valuation of its common capital stock of \$699,026.52. That said statement also showed that the following percentages of said amount were properly apportioned to the respective counties; to-wit:

Maricopa County,	54.57 per cent
Pima County,	26.53 per cent
Graham County,	2.34. per cent
Mohave County,	1.37 per cent
Gila County,	6.86 per cent
Greenlee County,	3.32 per cent
Pinal County,	3.22 per cent
Yavapai County,	1.79 per cent

#### VIII.

That for many years immediately prior to the year 1934, it was the uniform practice followed by the county assessors of the several counties of the state of

Arizona, and approved by the Tax Commission of the State of Arizona, to value for tax purposes the shares of stock of each of the banks in the State of Arizona at an aggregate amount equal to the capital stock, surplus and undivided profits of each of said banks, as shown by the books of said bank, and that in the year 1934, all or substantially all of the banks in the State of Arizona protested to the State Tax Commission of the State of Arizona, sitting as a Board of Equalization, against the valuation of their shares of stock on said basis, for the reason that the same constituted an assessment of the capital stock of said banks at its full cash value, when other classes of property in said state were assessed at an amount equal to 60% of their cash value, and that in consideration of said protests, said State Tax Commission, sitting as a Board of Equalization, in the year 1934, made a thorough examination of the valuation of shares of bank stock in the state of Arizona, and after such examination ordered that shares of bank stock should be valued by the following method: (1) That the statements filed by said banks should be revised and corrected by the use of the best information available; (2) That the shares of stock should be valued at 75% of the capital stock, surplus and undivided profits as shown by said revision of the banks statement. That said Tax Commission made no determination with reference to the taxability of shares of preferred stock of banks owned and held by Reconstruction Finance Corporation, and expressly left that question to be determined by the courts.

## IX.

That plaintiff is informed and believes, and upon such information and belief states that the State Tax Commission of the State of Arizona, said Tax Commission consisting of the same individuals as the State Board of Equalization, in the exercise of its supervisory powers over the county assessors of the State of Arizona, directed and instructed the county assessors of the State of Arizona to value for tax purposes for the year 1935, the shares of stock of all banks in the state at an amount equal to 75% of the capital stock, surplus and undivided profits of said banks, and that the county assessors of the several counties of the state, (except the county assessor of Mohave county) in pursuance of said instructions of the State Tax Commission, valued for tax purposes for the year 1935 the capital stock of all banks in their respective counties at an amount equal to 75% of the capital stock, surplus and undivided profits of said banks as shown by the books of said banks.

## X.

That in pursuance of a general plan and understanding among the taxing officials of the state of Arizona, including the members of the State Board of Equalization who are parties to this suit it has been the practice of the taxing officials of the state of Arizona for many years to assess property in the state of Arizona generally, at an amount equal to approximately 60% of its full cash value, and that said practice, in



pursuance of said general plan and understanding among said taxing officials, was continued and followed in the year 1935, and was approved by the State Board of Equalization in the year 1935.

## XI.

That the county assessors of Gila, Greenlee, Pinal and Yavapai Counties, fixed the valuation of plaintiff's shares of stock for tax purposes for the year 1935 in their respective counties by following the instructions of the said State Tax Commission, and applying the same to the statements filed by the plaintiff in their respective counties, that is to say, by adding together the common capital stock, surplus and undivided profits and reserves, as shown by said statement, and taking the percentage of the sum so arrived at shown by plaintiff's statement as the proper percentage for that county, and then taking 75% of the amount so arrived at as the assessable value of plaintiff's shares of stock in said county. That plaintiff makes no objection to the valuations arrived at by the counties of Gila, Greenlee, Pinal and Yavapai, as hereinabove set forth, and has not made, and does not now make any protest or objection to said valuations.

## XII.

That the County Assessor of Maricopa County arrived at the valuation to be placed upon plaintiff's shares of stock for tax purposes for the year 1935 by adding together the amount of the common capital

stock, surplus, undivided profits and reserves shown by the statement filed by him as aforesaid, and adding to the amount so arrived at the sum of \$1,240,000.00, being the par value of the preferred stock of plaintiff issued to and owned and held by the Reconstruction Finance Corporation, as hereinbefore alleged, the total so arrived at being the sum of \$1,939,026.00. Said county assessor then took 54.57 per cent of said sum, (said 54.57% being the percentage shown by the statement filed with him by plaintiff as the percentage properly apportioned to Maricopa County), thus arriving at \$1,058,126.77 as the amount apportioned to Maricopa County, and then computed 75% of said amount, making the sum of \$793,595.08, which sum said assessor placed on the tax roll as the assessable value of plaintiff's shares of stock for tax purposes for the year 1936 in said Maricopa County. That of the aforesaid valuation of \$793,595.08, 54.57% of 75% of \$1,240,000.00, or \$507,501.00, was and is the valuation placed by said county assessor upon Maricopa County's proportion of the shares of preferred stock of the plaintiff owned and held by the Reconstruction Finance Corporation.

### XIII.

That the county assessor of Pima county assessed the shares of stock of the plaintiff in said county by placing a valuation on the real and personal property owned and held by the plaintiff in said county as follows, to-wit:



# **"ASSESSED VALUATION OF VALLEY NATIONAL BANK OF ARIZONA, PIMA COUNTY**

**1935**

Co-Apportionment—13,795.6 shares of stock @ \$23,7459

Totalling.....\$327,590.00

## **REAL ESTATE, IMPROVEMENTS & PERSONAL PROPERTY HOLDINGS OF VALLEY NATIONAL BANK OF ARIZONA, PIMA COUNTY, 1935**

Description of Property	Lot	Blk	Real Estate Valuation	Imps. Val.	Personal Prop. Val..
Ajo	4	15	125		
Ajo	5	15	150	1405	785.00
Description of Property	Lot	Blk	Real Estate Valuation	Imps. Val.	Personal Prop. Val..
Tucson S 62' of N 123.04' of W 72.94' of Lot 3	10	208	13,020		
Tucson N 58' of W 64.73' of Lot 3 to- gether with a 3' strip on S-Sub 12		208	27,945	171,130	110,000.00
Rincon Heights	13	8	110		
Rincon Heights	14	8	110	1370	
S $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ (3), 21-13-14- D-4 Acres			10		
W-1 Acres			5		
E $\frac{1}{2}$ SW $\frac{1}{4}$ less parcel 1 & 5 (4) 26-13-14 D-58.81a			335		
S $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ & NW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ & E $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ (6) 27-13-14 P-20a			220		
W-15a			15		
S $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ (8) 27-13-14 P-17a			190	55	
W-3a			5		

S $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ (17) 27-13-14	1-5	115
	W-15	15

Part of N $\frac{1}{2}$  S $\frac{1}{2}$  of  
Sec. 28 lying N of

Rillito R (18) 28-13-14	D-25	75
	W-31.3	30

E $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$  & E $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$

NW $\frac{1}{4}$  & E $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$

(23) 28-13-14	P-10	110
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D-10	30
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W-7.5	10
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S $\frac{3}{4}$ S $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ (28) 28-13-14	1-5	115
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D-10	60
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E $\frac{1}{2}$  of SW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$  &

E $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$

(42) 28-18-14	P-1.6	20
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W-5.9	5
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Total	\$327,590.00
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Detail of Personal Property:

Bank Fixtures—\$110,000.

Bank Fixtures

in Ajo	875.
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#### XIV.

That it appears from the foregoing computation made by the county assessor of Pima County that the valuation arrived at by said county assessor in Pima County for the year 1935, was \$327,590.00 That the assessment made by said assessor does not show whether said valuation was intended to be imposed upon the tangible real and personal property owned by plaintiff in said county, or upon plaintiff's common capital stock, or upon plaintiff's preferred stock. If said valuation is construed as imposed upon plaintiff's real and personal property, it is wholly void as un-

authorized by the statutes of the state of Arizona, and if it is construed as imposed upon plaintiff's common stock, it amounts to a valuation of that portion of plaintiff's shares of common stock assessable in Pima County of approximately \$6.30 per share, which is the equivalent of a total valuation of plaintiff's shares of common stock in all counties of approximately \$23.75 per share. That \$400,000.00 worth of the \$1,240,000.00 par value of plaintiff's preferred stock was purchased from plaintiff by Reconstruction Finance Corporation for the express purpose of enabling plaintiff to purchase the assets of Consolidated National Bank, a national bank doing business at Tucson, Pima County, Arizona. That said assets of said Consolidated National Bank were practically all situated in said Pima County, and were purchased by plaintiff in February, 1935. That among said assets were the banking furniture and equipment and the banking house and office building owned by said Consolidated National Bank in the city of Tucson, which constitute practically all of the tangible real and personal property assessed in the manner aforesaid, as constituting the assessable value of plaintiff's shares of stock in Pima county.

## XV.

That the aforesaid valuation of the county assessor of Pima county was excessive and illegal to the extent following: The total of the common capital stock of \$260,000.00, the surplus of \$260,000.00, the undivided

profits of \$90,926.52, and the reserves of \$89,000.00, is \$699,026.52, which represents the shares of common capital stock of the plaintiff. Of this amount 26.53%, or the sum of \$185,451.73 is properly apportioned to Pima county, representing that portion of plaintiff's shares of common stock apportioned to Pima county. To make allowance for probable shrinkage in book assets, and the normal difference between the book value of assets and the actual value of the shares of stock in accordance with the method prescribed by the State Tax Commission as aforesaid, one-fourth thereof, or the sum of \$46,362.93 must be deducted, leaving the amount of \$139,088.80 as the actual cash value for the year 1935, of that portion of plaintiff's shares of common stock which is assessable in Pima county. That the excess over said sum of \$139,088.80 assessed against the shares of stock of plaintiff by the county assessor of Pima County, which is the amount of \$188,501.20, was assessed on account of valuations represented by plaintiff's preferred stock owned and held by the Reconstruction Finance Corporation.

## XVI.

That the County Assessor of Graham County assessed the shares of stock of the plaintiff in said county by placing a valuation on the real and personal property owned and held by the plaintiff in said county as follows:

West 30 feet of Lot 1, Safford,  
Block 39:

Value of Land.....	\$ 2,250.00
Value of Improvements.....	14,615.00
Lot 8, K & G, Block 2:	
Value of Land.....	120.00
Summary of Values:	
Total personal property.....	5,605.00
Total Real Estate.....	2,370.00
Total improvements.....	14,615.00
Total for County and State taxation.....	\$22,590.00

That in addition to the foregoing, said Assessor assessed certain real estate acquired by the plaintiff in the year 1935, prior to the date that the above and foregoing assessment was made, from The Consolidated National Bank of Tucson, as follows:

Northwest Quarter (NW $\frac{1}{4}$ ) and West Half (W $\frac{1}{2}$ ) of the Northeast Quarter (NE $\frac{1}{4}$ ) and Northwest Quarter (NW $\frac{1}{4}$ ) of the Southeast Quarter (SE $\frac{1}{4}$ ) of Section 21, Township 6, Range 25:

Acres.....	142
Class of Land.....	CUL
Value of Land.....	\$4,050.00

Lots One (1) and Two (2), Section 21, Township 6, Range 25:

Acres.....	50
Class of Land.....	CUL

Value of Land.....	\$1,420.00
Value of Improvements.....	1,200.00
Consolidated National Bank:	
Acres.....	125
Class of Land.....	W
Value of Land.....	\$ 125.00
Total Real Estate.....	5,595.00
Total Improvements.....	1,200.00
Total for County and State Taxes.....	\$6,795.00

That all of the foregoing property of plaintiff assessed by said county assessor of Graham county was acquired by plaintiff on or prior to the 11th day of February, 1935, from The Valley Bank & Trust Company, a State Bank, and the Consolidated National Bank of Tucson, a National Banking Association, both of which institutions were actively engaged in transacting a banking business at and prior to the time when said property was transferred by them to the plaintiff and that all of said property was included in the statement of capital, surplus, undivided profits and reserves filed by the plaintiff with said county assessor as aforesaid.

#### XVII.

That the total amount of the assessment in Graham county, being the sum of \$22,590.00, plus \$6,795.00, or \$29,385.00; as shown by the above tabulations, was arrived at by said county assessor by taking the assessa-

ble value of all of the real and personal property owned by the plaintiff in said county. That the assessment made by said assessor does not show whether said valuation was intended to be imposed upon the real and personal property owned by the plaintiff in said county, or whether it was intended to be imposed upon plaintiff's common capital stock or upon plaintiff's preferred stock. If construed as imposed upon the tangible real and personal property of plaintiff in said county, it is wholly unauthorized and void under the statutes of the state of Arizona. If it is construed as imposed upon plaintiff's common stock, it amounts to a valuation of that portion of plaintiff's shares of common stock assessable in Graham county, or approximately .56c per share, which is the equivalent of a total valuation of plaintiff's shares of common stock in all counties of approximately \$24.00 per share. That \$840,000.00 worth of the \$1,240,000.00 worth, par value of plaintiff's preferred stock was purchased from plaintiff by Reconstruction Finance Corporation for the express purpose of enabling plaintiff to pay off a debenture of \$840,000.00 owed by The Valley Bank & Trust Company to Reconstruction Finance Corporation. Said The Valley Bank & Trust Company was a state bank, having its principal place of business in Maricopa County, and branches in several other counties, including Graham County. That all of the assets of said bank were purchased by plaintiff in February, 1935, and said debenture of \$840,000.00 was paid by plain-



tiff out of the proceeds of plaintiff's preferred stock sold to Reconstruction Finance Corporation. That the assets of the Graham county branch of said The Valley Bank & Trust Company were 4.427% of the total assets of said The Valley Bank & Trust Company, and the pro rata part of the Graham county branch of said debenture of \$840,000.00 was 4.427% of said \$840,000.00, or \$37,186.80 of the proceeds plaintiff received from the sale of its preferred stock to Reconstruction Finance Corporation went into said Graham county branch. That the aforesaid valuation by said county assessor of Graham county was and is excessive and illegal to the extent following: The total of the common capital stock of \$260,000.00, the surplus of \$260,000.00, and the undivided profits of \$90,026.52, and the reserves of \$89,000.00 which represents the shares of common capital stock of plaintiff, is \$699,026.52. Of this amount, 2.34%, or \$16,357.22, is properly apportioned to Graham county representing that portion of plaintiff's shares of common stock apportioned to Graham county. From said sum must be deducted one-fourth thereof, or the sum of \$4,089.80 to make allowance for probable shrinkage in book assets and the normal difference between the book value of the assets and the actual value of the shares of stock, in accordance with the method prescribed by the State Tax Commission, as aforesaid, leaving the amount of \$12,267.42 as the true valuation for tax purposes for the year 1935 of that portion of plaintiff's shares of



common stock which is assessable in Graham county. That the valuation arrived at by the county assessor of Graham county in excess of said sum of \$12,267.42, said excess being \$17,117.58, was assessed upon values represented by preferred stock of the plaintiff owned and held by the Reconstruction Finance Corporation.

### XVIII.

That if the aforesaid assessments by the county assessors of Pima and Graham counties are construed as assessments and valuations of the property owned and held by the plaintiff in said counties as other property held by individuals and other corporations of said counties are assessed and valued, said assessments and valuations are wholly unauthorized and void for the reason that under the provisions of Section 3069, Revised Code of Arizona for 1928, and the decisions of the Supreme Court of Arizona construing said section, the property of banking associations or corporations engaged in the business of banking is not assessable or taxable, but only the shares of stock of such banking association or corporations are assessable and taxable.

That if the aforesaid assessments and valuations in Pima and Graham counties are construed as assessments and valuations of the shares of stock of the plaintiff, both common and preferred, and the taxes computed thereon payable by the holders of the common and preferred stock, said assessments and valuations are wholly void for the reason that said shares of preferred stock being owned and held by the Reconstruc-

tion Finance Corporation of the United States, are wholly exempt from state, county and local taxation under the Constitution and laws of the United States and the constitution and laws of the State of Arizona, and said assessments do not segregate the valuation placed upon the shares of common stock from the valuation placed upon the shares of preferred stock. That the shares of preferred stock of plaintiff are preferred both as to dividends and as to distribution of assets in case of liquidation, and are limited to participation in dividends and distribution of assets in the event of liquidation, and that as a result of such preferences and limitations so conferred and imposed upon them, the relation of the actual value of said shares to the par value thereof is not the same as the relation of the actual value of the shares of common stock to the par value of said common shares.

That if the aforesaid assessments in Pima and Graham counties are construed as assessments and valuations of the shares of common stock of the plaintiff, and the taxes computed thereon payable wholly by the owners of said shares of common stock, then such assessments and valuations are wholly void, for the reason that the same are excessive, confiscatory and discriminatory, greatly in excess of the actual value of said common shares, and discriminatory between the holders of said shares of common stock and the holders of common shares of stock in other banks, and also between the holders of the shares of common stock in the plaintiff, and other classes of property assessed in said

counties of Pima and Graham, and in said state of Arizona, for the following reasons:

1. That said assessments and valuations are void and confiscatory for the reason that in Pima county the sum of \$188,501.20 of the total assessment of \$327,590.00, and in Graham county the sum of \$17,117.58 of the total assessment of \$29,385.00, is assessed against said shares of common stock, not by reason of any assets represented by said shares of common stock, or by reason of any inherent value of said shares of common stock, but by reason of values represented by preferred stock of the plaintiff owned and held by the Reconstruction Finance Corporation.

2. That said assessments and valuations are excessive and confiscatory for the reason that said valuations of \$327,590.00 in Pima county, if deemed the valuation placed upon the shares of common stock of plaintiff, is a valuation of approximately \$23.75 per share and said valuation of \$29,385.00 in Graham county, if deemed a valuation placed upon the shares of common stock of plaintiff is a valuation of approximately \$24.00 per share, when the book value of said shares of stock determined by the value of the assets of the plaintiff, as shown by plaintiff's books is approximately \$13.50 per share, and the actual value of said shares of common stock as determined by actual sales made during the assessment period for the year 1935 is approximately \$11.00 per share.

3. That the said assessments and valuations of

\$327,590.00 of Pima county, and of \$29,385.00 in Graham county, if construed as assessments upon plaintiff's shares of common stock, are discriminatory against the holders of plaintiff's shares of common stock and in favor of the holders of common stock in other banks in the state of Arizona, for the reason that the holders of the common stock in other banks (said banks as far as known to the plaintiff having issued no shares of preferred stock owned or held by the Reconstruction Finance Corporation), have been assessed and valued by the direction of the State Tax Commission for tax purposes for the year 1935 at 75% of the capital stock, surplus and undivided profits of said banks, and that the holders of common stock of the plaintiff have been assessed for tax purposes in said two counties for the year 1935 at approximately twice the capital stock, surplus and undivided profits of the plaintiff.

4. That if said assessments and valuations of \$327,590.00 in Pima county, and \$29,385.00 in Graham county, are construed as assessments and valuations upon portions of plaintiff's common stock said assessments and valuations discriminate against the holders of the common stock of the plaintiff and in favor of the owners and holders of other classes of property in the state of Arizona, in that said shares of common stock of the plaintiff have been valued and assessed at approximately twice the actual value thereof, when other classes of property in the state of Arizona,

by a general plan adopted by said taxing officials of the state of Arizona, have been valued and assessed at not to exceed 60% of their actual cash value.

5. That if said assessments and valuations are construed as assessments and valuations of the shares of common stock of plaintiff, said assessments and valuations discriminate against the owners and holders of plaintiff's shares of common stock and in favor of the owners and holders of other moneyed capital in the state of Arizona, in violation of Section 548, Title 12 of the United States Code Annotated, in that said shares of stock have been assessed at approximately twice their actual value, while other moneyed capital in the hands of individual citizens of the state of Arizona coming into competition with the business of national banks, has been assessed at not to exceed 75% of its actual cash value.

#### XIX.

That the County Assessor of Mohave County assessed the shares of stock of the plaintiff as follows: He added together its common capital stock of \$260,000.00, its surplus of \$260,000.00, its undivided profits of \$90,026.52, and its reserves of \$89,000.00, making a total valuation of its shares of common stock of \$699,026.52, and taking 1.37% thereof as the proper percentage for Mohave County, thus arriving at a calculation of \$9,576.66, which said county assessor

placed on the tax roll as the valuation of plaintiff's shares of stock for tax purposes for the year 1935 in his county; that said valuations so made by the county assessor of Mohave County included no valuations attributable to preferred stock of the plaintiff, and was proper, except that there should have been deducted from the sum of \$9,576.66 as shown by the statement filed by plaintiff, one-fourth thereof, or the sum of \$2,394.16 and leaving the sum of \$7,182.50 as the actual cash value for tax purposes for the year 1935 of that portion of plaintiff's shares of common stock which is assessable in Mohave county. That said deduction of one-fourth must be made as aforesaid in order to place the valuation of plaintiff's shares of stock on the same basis as the valuation of the shares of stock of other banks in the state of Arizona, which were all valued either by the county assessors or the State Board of Equilization by the method prescribed by the State Tax Commission hereinabove set forth.

## XX.

That within the time provided by law plaintiff filed a written protest against the foregoing valuations of its shares of stock herein complained of with the County Board of Equilization in each of the counties of Maricopa, Pima, Graham and Mohave, being all of the counties in which the assessments and valuations of its shares of stock are complained of herein, and that



within the time provided by law plaintiff appeared before the County Board of Equalization in each of said counties and urged the correction and reduction of said assessments in all respects herein complained of. That each of said County Boards of Equalization heard the plaintiff and refused and denied any relief to the plaintiff.

### XXI.

That none of the aforesaid County Boards of Equalization made any changes in the valuations made as aforesaid by the respective county assessors upon the shares of stock of the plaintiff, and the Clerk of each of said boards of supervisors, immediately after the July adiournment of said Boards of Equalization, transmitted to the State Board of Equalization the respective valuations made as aforesaid by the respective county assessors, which valuations were as follows, to-wit:

County	Valuation on Tax Roll
Maricopa	\$793,595.08
Pima	327,590.00
Graham	29,385.00
Mohave	9,576.66

### XXII.

That on or about the 7th day of August, 1935, the plaintiff filed a written protest with the defendants,



Frank Luke, Thad M. Moore and D. C. O'Neil, sitting as a State Board of Equalization of the State of Arizona, protesting against the valuations of its shares of stock in Maricopa County, Pima County, Graham County and Mohave County, protesting against said valuations in all respects herein complained of, and on said 7th day of August, 1935, the plaintiff appeared before said Frank Luke, Thad M. Moore and D. C. O'Neil, sitting as a State Board of Equalization, and urged the correction and reduction of said valuations in all respects herein complained of. That said defendants, sitting as a Board of Equalization heard the plaintiff and refused and denied any relief to the plaintiff.

### XXIII.

That within the time provided by law the said State Board of Equalization fixed the rate of taxation to be levied for state purposes transmitted to the Board of Supervisors of each of the respective counties that are parties defendant to this suit; a statement of the changes which it had made in the assessment, (no change whatever having been made in the assessment of plaintiff's shares of stock) and the rate of taxes which was to be levied and collected within said county for state purposes. That each of said Board of Supervisors received said statement and ordered placed on the tax roll the respective valuations made by the respective county assessors as hereinabove alleged.

## XXIV.

That after the completion of the valuation of plaintiff's shares of stock and the placing hereof on the tax rolls as aforesaid in the respective counties, the Board of Supervisors and the governing bodies of the cities and towns in each of said counties, (except the city of Phoenix, in Maricopa County), finally determined the estimates provided for by Section 3098 Revised Code of Arizona for 1928, and the school superintendents in said counties furnished to said Boards of Supervisors the estimates provided for by Section 1090, Revised Code of Arizona for 1928, and said Boards of Supervisors assessed taxes for the several amounts estimated as well as the state tax, at the rate fixed aforesaid, upon the taxable property of the county and computed and carried out the real and personal taxes and total taxes of each person on said tax rolls, and computed at the proper tax rates determined by the Board of Supervisors or the State Board of Equalization upon the aforesaid valuations, and entered upon the said tax rolls as taxes upon the shares of stock of the shareholders of the plaintiff, and as payable by the plaintiff, the following amounts, to-wit:

Maricopa	\$49,810.86
Pima	20,362.98
Graham	1,894.88
Mohave	399.08

## XXV.

That upon completion of the tax rolls for the year 1935, said tax rolls containing thereon the respective items of taxes set forth in Paragraph XXIV above, the Chairman of the Board of Supervisors of each of said counties, as prescribed by statute, annexed thereto under his hand, a warrant, commanding the County Treasurer and Ex-Officio Tax Collector to collect from the several persons named in said tax roll, including plaintiff, one-half of the taxes set opposite their respective names, including the illegal and void taxes, taxed, assessed and levied as aforesaid, on or before the first Monday in November, 1935, and the other one-half of said taxes on or before the first Monday in May, 1936. That said tax rolls, together with said warrants, were delivered to the respective county treasurers of said counties parties defendant hereto, in the manner and within the time provided by law.

## XXVI.

That upon receipt of said assessment and tax rolls each of said county treasurers being parties defendant hereto, gave official notice specifying that one-half of said taxes, including said illegal and void taxes so levied and assessed upon plaintiff's said shares of stock, would be due and payable on the first Monday in September, 1935, and would become delinquent on the first Monday in November, 1935, at 5:00 o'clock p. m., and that the remaining one-half of said taxes would be due

and payable on the first Monday in March, 1936, and would become delinquent on the first Monday in May, 1936, at 5:00 o'clock p. m., and that unless said taxes were paid prior to becoming delinquent, interest would accrue thereon from the time of such delinquency at the rate of ten per cent per annum until paid, or until said property or such part thereof as was necessary had been sold, and thereafter interest would accrue thereon at the rate provided in the tax certificates issued covering the sale of said property, but not to exceed fifteen per cent per annum.

## XXVII.

That before the first Monday in November, 1935, and before the filing of this bill of complaint, and during the regular office hours of the respective county treasurers who are parties defendant hereto, plaintiff tendered and offered to pay to each of said county treasurers the amount of taxes which plaintiff believes to be justly due and owing by the owners and holders of its shares of common stock to said county treasurers for state, county and local taxes for the year 1935. The amounts which the plaintiff so tendered and offered to pay to each of said county treasurers are as follows:

Maricopa County,	\$17,938.09
Pima County,	8,637.30
Graham County,	808.58
Mohave County,	298.78

The plaintiff determined the amounts so above tendered as the amounts justly due and owing to the said county treasurers for taxes for the year 1935, by computing the valuations of its common capital stock in the manner in which said county treasurers were directed to compute the same by the State Tax Commission, excluding, however, from said computation plaintiff's shares of preferred stock held by the Reconstruction Finance Corporation and the assets represented thereby. That is to say, plaintiff added together its common capital stock of \$260,000.00, its surplus of \$260,000.00, its undivided profits of \$90,026.52, and its reserves of \$89,000.00, making the sum of \$699,026.52, and then took the proper percentage thereof apportioned to each of said counties, to-wit: Maricopa County 54.47 per cent, Pima County 26.53 per cent, Graham County, 2.34 per cent, Mohave County, 1.37 per cent, which gave the following figures:

Maricopa County,	\$381,458.77
Pima County,	185,451.73
Graham County,	16,357.22
Mohave County,	9,576.66

and then took 75% of each of said amounts, thus arriving at the actual cash value in each of said counties for plaintiff's shares of stock as follows:

Maricopa County,	\$286,094.08
Pima County,	139,088.80
Graham County,	12,267.91
Mohave County,	7,182.50

and computed the tax at the respective rates as fixed in said counties by the proper authorities therein, thus arriving at the taxes in each of said counties at the amounts alleged to have been tendered.

That the amount so tendered by plaintiff is the amount of taxes which would have been assessed against the shares of common capital stock in the several counties that are parties defendant hereto by the action of the assessing officials and State Board of Equalization if said taxing officials and said State Board of Equalization had applied the same basis of valuation to plaintiff's shares of common capital stock as they applied to the shares of other banks, state and national, doing business in the state of Arizona, and is likewise the amount that the taxing officials and State Board of Equalization would have assessed plaintiff's shares of common capital stock if they had not attempted to impose additional taxes upon plaintiff by reason of the fact that preferred shares of stock of the plaintiff were owned and held by the Reconstruction Finance Corporation.

#### XXVIII.

That each of the said county treasurers aforesaid refused and continues to refuse to accept payment of the amount tendered upon the ground that said amount tendered was not the full amount of taxes assessed to and payable by plaintiff for the purposes for which it was tendered. That each of said county treasurers, on refusing said tender, declared that it was his duty to



collect from plaintiff the amount of taxes assessed against plaintiff's shares of stock that appeared on his books, and that he would proceed to collect the same in accordance with the laws of the State of Arizona.

That plaintiff has been and is willing and able, and has stood ready and will continue to stand ready to pay to each of the above mentioned county treasurers the amounts tendered as aforesaid, and that if this court shall hold that the sums which plaintiff has tendered and offered to pay to the said county treasurers, or any of them, for the purposes for which said tenders were made, are less than the amounts found justly and equitably due and owing by the plaintiff to the said county treasurers, or any of them, for 1935 taxes, plaintiff stands ready, able and willing to pay, and will pay to the said county treasurers, and each of them, such other and further sum or sums as this court shall find to be just and equitable.

#### XXIX.

That it was and is provided by Section 3101, Revised Code of Arizona for 1928, as amended by Chapter 106, Session Laws of Arizona for 1931, that all taxes levied upon real or personal property shall be a lien upon the property assessed, which lien shall attach on the first Monday in January in each year and shall not be satisfied or removed until such taxes, penalties, charges and interest are paid or the property is finally vested in a purchaser under a sale for taxes, and that said lien shall be prior and superior to all other liens



and encumbrances upon said property, except liens and encumbrances held by the state of Arizona. That it is further provided by said section, amended as aforesaid, that personal property shall be liable for taxes levied on real property and real property shall be liable for taxes levied on personal property, and that a judgment against real property for non-payment of taxes thereon or assessed to the personal property of the same person shall not be prevented by showing that the owner thereof was possessed of personal property out of which the taxes could have been made.

That it was and is provided by Section 3070, Revised Code of Arizona, 1928, that the taxes due upon shares of banking corporations or associations shall be paid by such corporation or association and shall be a lien against and assessed to such shares of stock and no such corporation or association shall pay any dividends to any shareholder who is in default in the payment of taxes due on his shares, nor shall it permit the transfer on its books of any shares the owner of which is in default in the payment of his taxes on the same.

That it was and is provided by Section 3112 of the Revised Code of Arizona, 1928, that the county treasurer may at any time after receiving the tax roll, collect by distraint and sale, if not otherwise collected, the taxes due on personal property; that the sale must be at public auction after one weeks' notice of the time and place thereof, and must be of sufficient amount of the property issued to pay the taxes, fees and costs, and that on payment of the purchase price and delivery of

the property with a bill of sale thereof, title thereto vest in the purchaser.

That it was and is provided by Section 15 of Title 103 of Arizona Session Laws of 1931, that taxes upon real estate if unpaid, shall become delinquent, first half, on the first Monday in November, and second half, on the first Monday in May, of each year, and that it was and is provided by Section 17 of said Chapter 103, that all taxes shall bear interest from the time of delinquency at the rate of ten per cent per annum until paid, and a fraction of a month shall be counted as a whole month, and that it was and is further provided by Section 18 of said Chapter 103, that all real property upon which the taxes, including personal property taxes secured thereby are unpaid and delinquent, shall be subject to sale as in said chapter provided.

### XXX.

That by virtue of the foregoing provisions of the statutes of the state of Arizona, the taxes levied and assessed upon plaintiff's shares of stock for the year 1935 in the manner aforesaid, whether legal or illegal, became payable on or before the fourth day of November, 1935.

Plaintiff in the year 1935, and at all times since, has owned and held real estate in all of the counties which are parties defendant to this suit, except Yavapai County.

That many of the owners and holders of plaintiff's shares of stock owned and held during the year 1935,

and now own and hold real estate in one or more of said counties, and that the aforesaid illegal taxes are an apparent lien or cloud upon the real estate owned by the plaintiff in the respective counties and upon the real estate of the shareholders of the plaintiff in the respective counties as well as upon said shares of stock and that said shares of stock on said 4th day of November, 1935, became subject to seizure and sale for said taxes in the manner provided by the Statutes of Arizona above set forth. That by reason of the statutes above mentioned, plaintiff could not with safety to itself permit the transfer of shares of its stock on its books or pay dividends to its shareholders on its shares of stock and if it refused to permit such transfers or refused to pay any such dividends on account of the non-payment of said taxes by said shareholders, it might subject itself to numerous suits brought by its shareholders to compel such transfers or to recover damages for refusing to make such transfers or to pay dividends.

That it was impossible for plaintiff to determine from the assessments made in Pima and Graham counties whether the taxes imposed in said counties were imposed solely on plaintiff's shares of common stock or upon both common and preferred shares and if plaintiff assumed that said taxes were imposed upon both classes of stock, it was impossible to apportion the same between the common and preferred shares. Hence, if plaintiff paid said taxes as demanded by the treasurers of said two counties it would not know to which class of its shareholders to charge said payment,

or if it charged the same to both classes, it would not know what amount to charge to each, and if it attempted to secure reimbursement by withholding payment of dividends or refusing transfers of shares, it would subject itself to a separate suit for damages by each of its shareholders.

That plaintiff, finding itself involved in the difficulties above mentioned, filed its original Bill of Complaint in this court before the fourth day of November, 1935, and prayed for the issuance of a temporary injunction restraining the defendants from proceeding to collect the taxes complained of; that after said complaint was filed, a stipulation was entered into by and between the plaintiff and the several defendants by which it was stipulated and agreed that the several defendant county treasurers would accept the amount of taxes theretofore tendered by the plaintiff to each of them without prejudice to their right to collect the remainder at any future time and that the plaintiff might withdraw its application for temporary injunction and that the said defendants would refrain from proceeding to enforce collection of taxes alleged by plaintiff to be illegal during the pendency of this suit, but that said defendants or any of them should have the right at any future time to proceed to collect said taxes in the manner they thought proper and that if they did so proceed, or threaten to proceed, plaintiff should have the right to renew its application for temporary injunction. That said stipulation expressly provided that the rights of any party to prosecute or defend this suit should not

be prejudiced or affected in any way by said stipulation, or anything done in pursuance thereof except in so far as said stipulation expressly provided therefor. That said stipulation was approved by an Order regularly made and entered by the court.

That on or about the 10th day of April, 1939, the County Treasurer of Pima County gave notice to the plaintiff that he would proceed to collect all of the taxes assessed in his county against plaintiff's shares of stock for the year 1935, including those alleged to be illegal by the plaintiff, as well as those admitted to be legal.

That plaintiff is informed and believes and upon such information and belief alleges that said County Treasurer will proceed to collect such taxes in the manner provided by law unless restrained by the order of this court, and that by reason of the aforesaid action of the County Treasurer of Pima County, all of the defendants now renew their threat to enforce collection of the taxes hereby sought to be enjoined. That those county officers made parties defendant hereto who have come into office since filing the original Bill of Complaint continue the threat of their predecessors to enforce collection of said taxes, and that by reason of the aforesaid threats, plaintiff now renews its application for temporary injunction.

### XXXI.

That it was and is provided by Section 3065, Revised Code of Arizona for 1928, that a taxpayer dissatisfied with the amount of his assessment as reviewed by the

State Board of Equalization may appeal from said assessment to the Superior Court of the county where the taxes are payable; that the remedy of such appeal was and is not available to the plaintiff to relieve it from the burden of the illegal taxes herein complained of, for the following reasons:

1. That said appeal is by said Section 3065 limited to a determination of the full cash value of the property assessed, and does not give the party appealing the right to question the legality of the tax imposed or any part thereof.

2. That the judgment of the court on such appeal is by said Section 3065, limited to finding the full cash value of the property assessed and said judgment cannot provide for the elimination from the assessment of property illegally or wrongfully assessed.

3. That the valuations made by the county assessors of Pima and Graham counties sought to be reviewed herein by plaintiff, present an issue as to the proper division of the assets of plaintiff between each of said counties and the county of Maricopa, in which the principal office of plaintiff is situated, and that said issue cannot be considered or determined on such appeal.

That such appeal would have to be taken separately from the valuation made by each of the four counties to the Superior court of that county. The question of apportionment among said four counties would have to be determined separately in each of said counties without an opportunity for any county, except the one



in whose Superior Court the particular suit was pending, to be heard on said question, with the result that there would probably be four different decisions and four different appeals to the Supreme Court, all of which would have to be determined without opportunity for the several counties to directly contest their respective contentions.

4. That no such appeal can be taken unless the appellant first pays to the said county treasurer the amount of taxes levied against his property, and unless so paid the appeal must be dismissed by the court, and there is no provision for the county treasurer withholding the disbursements of the money paid by appellant until the determination of said appeal and the judgment on the appeal, if in favor of the appellant, can only be a judgment against the county for the amount of the excess taxes paid and such judgment will be of little value to the plaintiff for the reasons hereinafter set forth.

5. That said appeal lies only to the Superior Court of the county in which the tax is assessed and is not available in a Federal Court; that such appeal is a judicial and not an administrative remedy and plaintiff, under the constitution and laws of the United States, is not obliged to resort thereto but may bring its action in a Federal Court of Equity.

#### XXXII.

That it was and is provided by Section 55 of Chapter 103 of Arizona Session Laws for 1931, that no person



upon whom a tax has been imposed under any law relating to taxation shall be permitted to test the validity thereof either as plaintiff or defendant, unless such taxes shall first have been paid to the proper county treasurer together with all penalties thereon and that no injunction shall ever issue in any county or proceeding in any court against the state or against any county, municipality or officer thereof, to prevent or enjoin the collection of any tax levied.

That it was and is provided by the aforesaid Section 55, that after payment of taxes an action may be maintained to recover any tax illegally collected, and if the tax due shall be determined to be less than the amount paid, the excess shall be refunded in the manner "hereinbefore provided," but that said Chapter 103, Arizona Session Laws of 1931, wholly fails to provide in what manner said refund may be made.

That it was and is provided by Section 876 of the Revised Code of Arizona for 1928, that the treasurers of the several counties shall transmit to the state treasurer all money in the county treasury belonging to the state, or collected for it within ten days after receipt of a letter from the State Treasurer to that effect.

That it was and is provided by Section 3107, Revised Code of Arizona for 1928, that the county treasurer shall pay to the treasurer of each City or Town in his county, on the first day of each month in each year, all money in his hands collected for the previous month on taxes for said city or town.

That it was and is provided by Section 1029, Re-

vised Code of Arizona for 1928, that the county treasurer shall receive and hold as a special fund all school moneys, and keep a separate account thereof, and when it is apportioned among the school districts, shall keep a separate account for each district, notify the County School Superintendent on the first of each calendar month of the amount of the county school fund and special district funds on hand in the treasury to the credit of such fund, and pay over on the warrants of the county school superintendent duly endorsed by the person entitled to receive the same, any or all such money.

That there is no provision in the laws of the state of Arizona requiring or permitting county treasurers to withhold from apportionment or distribution to the state or city or towns, or school districts, or other legal subdivisions therein, any tax money paid to them under protest or as a condition precedent to the appeal provided by Section 3065, Revised Code of Arizona for 1928, from the valuation fixed by the State Board of Equalization.

### XXXIII.

That at the time of the filing of the original complaint in this cause there was no controlling decision by the courts of Arizona determining the nature of the judgment that should be rendered in a case to recover taxes paid under protest, under the provisions of Section 35 of Chapter 103, Arizona Session Laws of 1931. Plaintiff alleged in the original complaint that it might

be held by the courts of Arizona that separate actions would be required to be brought against the county and the state and school districts, and the municipalities to which the taxes sought to be recovered had been distributed, and that if it were so held, it would be impracticable for plaintiff to pay the taxes and sue to recover the amount paid from the various counties, school districts and municipalities, on account of the multiplicity of suits that would be required to be brought in such event. That since the filing of the original complaint in this cause, on or about the 10th day of October, 1935, the Supreme Court of Arizona construed Section 55 of Chapter 103 of the Session Laws of 1931 so as to give a taxpayer who had paid taxes under protest and sued to recover the same, an ordinary judgment against the county into whose treasury the money was paid by the taxpayer. Said court construed said Section 55 as not creating a trust fund of the tax moneys paid under protest, and as not requiring the county treasurer to withhold distribution of said tax moneys so paid under protest, and as not requiring said county treasurer to refund the particular moneys paid to him, and further interpreted said Section 55 with other sections construed together therewith as giving to the taxpayer who has paid his taxes under protest merely the right to an ordinary judgment against the county on an equality with other general obligations of the county. As thus construed, said Section 55 gives to the taxpayer paying taxes under protest, if the taxes are shown to have been illegal, a judgment against the county, which

it is the duty of the Board of Supervisors of the county to pay out of funds in the county treasury not otherwise apportioned, or, if there are no such funds, it becomes the duty of the Board of Supervisors to budget the judgment as a county expense and levy a tax to pay it. That the remedy as thus given to the taxpayer who pays illegal taxes under protest is wholly inadequate for the reason that if the plaintiff in this suit should pay the illegal taxes herein complained of under protest, and should sue to recover the same and obtain a judgment against the respective counties, it would be unable to realize on said judgments for the reason that there are no funds in the treasuries of the said counties not otherwise appropriated which can be applied to the payment of said judgments, and that the duty imposed upon the Board of Supervisors to include such judgments in the budget can be exercised only at the time provided by law for the making of the budget, to-wit, on or about the first Monday in August of each year. That provision for said budget is made by Sections 3097 and 3098, Revised Code of Arizona for 1928, and by such sections, and by Sections 3093 and 3094, Revised Code of Arizona for 1928, providing for the levy of taxes, no allowance is made for delinquencies in collection, so that if the plaintiff should recover judgments for taxes paid under protest, against the several counties that are parties defendant to this suit, by virtue of the sections of the statute aforesaid, a levy would be made only for the amount of such judgments, with-

out any allowance whatsoever for delinquencies in the collection of taxes.

That by reason of the existing financial depression, and the difficulty of collecting taxes in all of the counties which are parties defendant to this suit, a large percentage of the taxes levied becomes delinquent and remains uncollected for a period of years, and a large percentage of the taxes hereafter levied will become delinquent and remain uncollected for a period of years:

That plaintiff is advised and believes, and upon such information and belief alleges that in Maricopa County, in which the largest amount of illegal taxes which plaintiff seeks to enjoin are claimed to be payable, the percentage of unpaid taxes amounts to more than twenty-five per cent, and that in all probability such percentage of delinquency will continue for a number of years to amount to more than twenty-five per cent, and that by the provisions of Section 33, Chapter 103, of the Arizona Session Laws of 1931, the proceeds of such delinquent taxes, when collected, are required to be distributed for the purposes for which they were originally levied, (exclusive of penalties, which go to the general fund of the county,) and the statutes of the state of Arizona make no provision for a further levy to cover delinquencies in collection of the original levy, and that for the last four sessions the legislature of the state of Arizona, has passed laws to a large extent remitting penalties on delinquent taxes. That it is provided by said Chapter 103, Session Laws of Arizona for 1931, that real property subject to the lien for taxes thereon,

or for taxes on personal property assessed to the same owner, may be sold and when so sold is subject to redemption for a period of three years. That the taxing officials in the several counties who are parties defendant to this suit owing to the large amount of delinquent taxes therein, permit a period of time as long as five years to elapse before making such sales, and in some of the counties in which plaintiff is assessed for taxes, no sales for taxes have been made for several years, notwithstanding delinquencies in the payment thereof, and that if and when such sales are made there are usually no purchasers for said real estate and the same is and will continue to be struck off to the state of Arizona, and no money will be collected on account of such sales until the expiration of the period of redemption, which is three years from the date of the sale, and that by reason of said provisions of the statutes of Arizona, and the existing financial depression, if plaintiff should pay the illegal taxes assessed against its shares and sue to recover the same from the respective counties it would probably be more than a year from the date plaintiff obtained judgment before it would receive any payment on said judgment, and it would be many years before it would receive payment of more than two-thirds of said judgment, and in all probability a large percentage of said judgment would never be paid at all for the reason that the full amount of the levy for said judgment would in all probability never be collected, and by reason of the acts of the legislature



heretofore passed and which will probably be passed hereafter, waiving the collection of penalties on delinquent taxes, there probably never will be sufficient unappropriated money in the treasury of said counties to pay said judgments in full.

That the illegal taxes against which plaintiff seeks relief in this cause are required to be paid to four different county treasurers, and there is no provision under the laws of Arizona by which one action or proceeding may be brought against the four counties, and therefore plaintiff would in all events be required to bring at least four separate actions to recover illegal taxes paid by it under protest. That the duty enjoined by law upon the Board of Supervisors to include judgments for illegal taxes paid under protest in the budget and to make a levy for said judgments if neglected by said Board of Supervisors is enforceable only by mandamus. That if said Board of Supervisors in each of said counties should neglect to include the judgments that might be recovered by plaintiff in their budgets, plaintiff would be required to bring four separate actions in mandamus against said Boards of Supervisors, after having brought four separate actions to recover judgments.

That by reason of the foregoing facts, plaintiff has the right to resort to a federal court of equity to enjoin the collection of said illegal taxes, to avoid the necessity of bringing a multiplicity of suits.



## XXXIV.

That as appears from paragraphs numbered XIII and XIV of this Second Amended and Supplemental Bill of Complaint, the assessments made or attempted to be made on plaintiff's shares of stock in Pima and Graham counties, are based upon a valuation of the physical properties owned and held by plaintiff in said counties. That plaintiff is advised and believes, and upon such information and belief alleges that the taxing officials of said counties take the position and will assert in any proceeding to recover taxes assessed by them from plaintiff that under the provisions of Section 3071, Revised Code of Arizona for 1928, they have the right to value plaintiff's shares of stock at an amount not less than the actual cash value of the real and personal property of the plaintiff situated in their respective counties, and that said defendants will attempt to justify the assessments made by them upon the real and personal property of the plaintiff in the said counties of Pima and Graham as being a valuation of the shares of stock of plaintiff, in an amount equal to the actual cash value of the real and personal property of the plaintiff situated in said counties, and that said taxing officials will assert in this suit, and will assert in any suit involving the collection of taxes from plaintiff for said counties, that the valuation of plaintiff's shares of preferred stock must be apportioned to Maricopa County, the county in which plaintiff's principal banking house is situated and that the

taxing officials of Maricopa County do assert and will assert in this suit, or in any suit involving the collection of the taxes imposed by them upon the plaintiff that a proper proportion of plaintiff's shares of preferred stock must be apportioned to the several counties in which the plaintiff has branches, and that if the plaintiff should pay the taxes assessed against it in the several counties involved in this suit, and should seek to recover that portion of the taxes imposed on account of its preferred stock by separate suits against each of the several county treasurers of said counties the defense will be made to the suits filed to recover the excessive amount of said taxes in Pima and Graham counties that there was an improper apportionment of the taxable valuation of plaintiff's property as between Maricopa County and each of said counties of Pima and Graham an issue which could not be determined in separate suits to recover the taxes paid, nor in any suit except a proceeding in equity to which the taxing officials of said counties of Maricopa, Pima and Graham are made parties.

That subsequent to the filing of the original complaint in this cause, at the time fixed by law for assessing taxes for the year 1937, the taxing officials of the several counties, parties hereto, and of other counties in the State of Arizona in which plaintiff has branches, assessed taxes for the year 1937 upon plaintiff's shares of stock; that all of such assessments were reviewed at the proper time by the State Board of Equalization; that said Board eliminated all values repre-

sented by plaintiff's preferred stock from such assessments for said 1937 taxes, except that in the case of Pima County the assessment was again made for an amount equal to the full value of the tangible, real and personal property owned by the plaintiff and situated in that county, said Pima county thus again assessing values represented by plaintiff's preferred stock owned and held by Reconstruction Finance Corporation, and said State Board of Equalization thus again declined to eliminate said values from said assessment and said Pima county imposed a tax of approximately \$11,400.00 on values represented by plaintiff's preferred stock owned and held by the Reconstruction Finance Corporation. Plaintiff did not appeal from the action of said Board of Equalization under Section 3065, Revised Code of Arizona for 1928, but paid the full tax assessed, under protest, and sued to recover said sum of \$11,400.00 from Pima county, or, in the alternative, if Pima county's method of assessment should be found correct by the court, to recover said sum pro rata from the other counties to which it was paid.

The trial court held that the plaintiff's exclusive remedy provided by the State Law was by appeal to the Superior Court of the county, under Section 3065, Revised Code of 1928, and that plaintiff had no remedy to pay the tax under protest and recover the same under Section 55, Chapter 103, Session Laws of 1931; that there is no decision by the Supreme Court of Arizona authoritatively passing upon the question. Said Supreme Court has once said by way of dictum that the

remedy provided by Section 55, Chapter 103, Session Laws 1931, is available only when the tax is assessed under an unconstitutional law, and again it has said by way of dictum that the remedy provided by Section 55, Chapter 103 Session Laws of 1931, is available whenever no other remedy is provided by law. There being conflicting declarations by it, said Supreme Court does not consider itself bound by either expression and deems the question wholly open for future decision.

### XXXV.

That by reason of the foregoing facts, plaintiff has no adequate remedy by payment of the illegal taxes, and suing to recover the same, and is entitled to maintain this suit in equity for the purpose of preventing a multiplicity of suits, and to obtain an adjudication of the proper apportionment of taxes between the several counties parties hereto.

### XXXVI.

That by reason of the provisions in the statute of the state of Arizona hereinbefore alleged, prohibiting the issuance of an injunction to prevent the collection of illegal taxes, plaintiff is without remedy in the courts of the state of Arizona, and has no remedy except in the United States District Court, for the District of Arizona.

### XXXVII.

That the plaintiff has exhausted all administrative

remedies available to it under the statutes and laws of the state of Arizona.

### XXXVIII.

That by reason of all the matters and things hereinbefore alleged, plaintiff, unless granted the relief herein prayed for, will suffer great and irreparable damage and injury, and will be subjected to a multiplicity of suits, and has no plain or adequate remedy at law.

### XXXIX.

That at the time of the filing of the original complaint in this cause, plaintiff was advised by its counsel and believed in good faith that the constitution and laws of the United States secured to plaintiff and its shareholders immunity from taxation by or under the authority of the state on its shares of preferred stock hereinbefore described, and on the assets represented by said preferred stock, said assets being acquired by and from the money paid to it by the Reconstruction Finance Corporation of the United States of America, as the purchase price of said preferred stock, and that in said original complaint plaintiff, on behalf of itself and as the agent and trustee of its shareholders, expressly claimed such immunity.

That plaintiff in said original complaint further claimed immunity from such taxation under the exemption granted to said property by Section 2 of Article 4X of the Arizona Constitution hereinbefore set forth, and likewise claimed that the taxes sought to be enjoined

by it in said original complaint were illegal and void, because of discrimination against it made by the assessing officers in violation of the Constitution of Arizona, and the Act of Congress permitting and limiting the taxation of shares of stock of national banks.

That after the filing of the original Bill of Complaint in this cause, to-wit, on or about the 3rd day of February, 1936, the Supreme Court of the United States determined and decided that the immunity from taxation under the Constitution and laws of the United States of the shares of preferred stock of National banks held by the Reconstruction Finance Corporation, had been waived by the Congress of the United States giving its consent to the taxation of shares of stock of national banks.

That while said original complaint remained pending on plaintiff's claim of the exemption of the taxes sought to be enjoyed under Section 2 of Article IX of the State Constitution, and plaintiff's claim of discriminatory assessment violating the Constitution of the State of Arizona, and plaintiff's claim of the violation of the Acts of Congress permitting and limiting the assessment of shares of stock of national banks on or about the 20th day of March, 1936, the Congress of the United States passed an act which was signed by the President on the same day, expressly declaring that preferred stock of national banks held by the Reconstruction Finance Corporation of the United States, should be exempt from all taxes, whether theretofore or thereafter assessed or levied. That the major por-



tion of the taxes, the collection of which the plaintiff seeks to enjoin in this case, falls clearly within the terms of said last mentioned Act of Congress as taxes theretofore assessed and levied, and which have not been paid. That the Reconstruction Finance Corporation, the holder of the shares of preferred stock of the plaintiff against which the major portion of the taxes herein sought to be enjoined has been levied, immediately gave notice to the plaintiff to refuse payment of all taxes heretofore or hereafter assessed or levied against the preferred stock of the plaintiff owned and held by the Reconstruction Finance Corporation. That the whole of the \$1,240,000.00 par value of the shares of stock attempted to be assessed for taxes as hereinbefore alleged, is and at all times hereinafter mentioned has been owned by said Reconstruction Finance Corporation. That under the provisions of Sections 3069 and 3070, of the Revised Code of Arizona, and also under the decision of the Supreme Court of the United States, made February 3, 1936, the major portion of the illegal taxes, the collection of which is sought to be enjoined in this case, is levied and assessed upon the shares of preferred stock of the plaintiff owned and held by the Reconstruction Finance Corporation, and is payable only by the plaintiff as the statutory agent for such preferred shareholder, and if plaintiff pays such taxes, the same cannot be deducted from its general assets, nor can the same be deducted from the dividends to its common shareholders, but under the said Sections 3069 and 3070, of the Revised Code of 1928, the same



are required to be deducted from the dividends on the preferred stock of the Reconstruction Finance Corporation.

That under the provisions of the Act of Congress, which became a law on March 20, 1936, the Reconstruction Finance Corporation is precluded from permitting the plaintiff to deduct said taxes from the dividends payable on the preferred stock held by it.

That the plaintiff is informed and believes, and upon such information and belief states that the waiver of the exemption from taxation of the property owned and held by an instrumentality of the United States, such as the Reconstruction Finance Corporation, is within the control of congress and can be granted or withheld at the pleasure of congress, and that when the privilege theretofore extended to the several states and the counties and municipalities thereof to tax such shares of preferred stock owned and held by such instrumentality of the United States was withdrawn by congress as to all taxes, whether theretofore or thereafter levied or assessed, the effect of the withdrawal of such privilege was to prevent and preclude absolutely the payment of any such taxes by the Reconstruction Finance Corporation, and that plaintiff is further informed and believes, and upon such information and belief states that said Act of Congress is valid, both as to taxes hereafter to be levied and assessed and taxes heretofore levied and assessed, and that if plaintiff is required to pay said taxes to the respective counties which are

parties defendant hereto as the agent of the Reconstruction Finance Corporation, as its preferred shareholder, it will be unable to reimburse itself for such payment from the Reconstruction Finance Corporation, and that by reason of the foregoing facts the collection of said taxes on its preferred shares of stock will compel the plaintiff to pay out of its own funds, taxes assessed against the property of another in contravention of the due process clause of the Constitution of the United States and the Constitution of the state of Arizona, and that plaintiff herein and hereby expressly claims the right, privilege and immunity under the constitution and laws of the United States, of not being subjected to the payment of such taxes of its preferred shareholder, which it will be unable to collect from such shareholder.

#### WHEREFORE, PLAINTIFF PRAYS:

1. That the assessment of plaintiff's said shares of stock, and the assessment of property owned and held by the plaintiff, made by the county assessors of the several counties parties hereto, for the purpose of state, county, school district and other local taxation, (except City of Phoenix taxes) for the year 1935, as aforesaid, be decreed to be illegal and void and without any force or effect whatsoever, and to be in violation and contravention of the constitution and laws of the United States and the constitution and laws of the State of Arizona.

2. That the said taxes so levied and assessed upon plaintiff's said shares of stock, or upon property owned and held by the plaintiff for the year 1935, for state, county, school district and other local taxation, (except city of Phoenix taxes) set forth, be decreed to be wholly illegal and void. That any taxes which may hereafter be levied or assessed upon plaintiff's shares for said purposes for the year 1935, and based and computed upon said illegal and void assessment, likewise be decreed to be wholly illegal and void.

3. That the apparent lien resulting, and any apparent lien which may hereafter result from the levy and assessment of said taxes on plaintiff's said shares of stock, or on property owned and held by the plaintiff as aforesaid, be decreed to be wholly illegal and void, and without any force or effect whatsoever.

4. That the respective county treasurers, defendants herein, be directed to receive and accept from the plaintiff the respective sums of money heretofore offered and tendered to them, or such other sums as the court may find to be justly due and owing from the plaintiff and its shareholders to said county treasurers for taxes for the year 1935, levied or assessed against plaintiff's said shares of stock, or property owned and held by the plaintiff for state, county, school district and local taxes, for the year 1935, in full satisfaction as and for taxes levied and assessed for said purposes against plaintiff's said shares of stock for the year 1935.

5. That it be adjudged and decreed that plaintiff's shares of preferred stock, and property of the plaintiff represented thereby, is wholly immune and exempt from taxation by or under the authority of the State of Arizona, so long as said shares of preferred stock are owned and held by the Reconstruction Finance Corporation of the United States of America.

6. That if this court should be of the opinion that the Act of Congress adopted March 20, 1936, withdrawing the privilege of taxing shares of preferred stock of national banks owned and held by the Reconstruction Finance Corporation from the several states, cannot be given effect as against taxes levied and assessed prior to the adoption of said Act, that in that event this court order and decree that until it be adjudged and determined by the court of last resort that said taxes against the shares of preferred stock held by the Reconstruction Finance Corporation are collectible from said corporation, plaintiff be protected against the collection thereof by the respective county treasurers who are parties to this suit, upon the ground that to compel the plaintiff to pay the obligation of another, when its right to reimburse itself for that payment from the true debtor is doubtful, will be to deprive the plaintiff of its property without due process of law, and that on said ground the collection of said taxes be enjoined until the proper construction and effect of said Act of Congress be finally determined.

7. That a temporary and interlocutory injunction

issue out of and under the seal of this court, directed to the defendants, and each of them, commanding them and each of them, and each of their deputies, assistants, agents, servants, employees, attorneys, and successors in office, to desist from collecting or attempting to collect the whole or any part of said illegal and void taxes so levied or assessed, or which hereafter may be levied or assessed upon plaintiff's shares of stock, or upon property owned and held by the plaintiff for the year 1935, as aforesaid; or any penalty or interest thereon, either by distraint or sale, or by suit or sale, or issuance of delinquent tax certificates or otherwise, and to desist from instituting, conducting or causing to be instituted or conducted, any proceedings to enforce the payment of the whole or any part of said illegal or void taxes, or of said penalties, charges or interest, or to enforce or foreclose any apparent lien resulting from the levy and assessment of said taxes as aforesaid, or from advertising or offering plaintiff's said shares, or any part thereof, for sale for the purpose of collecting or attempting to collect said taxes, penalties, charges or interest, or from issuing or delivering any tax certificate or certificates to any pretended purchaser or purchasers of said property, or any part thereof, or otherwise, by reason of or resulting from said illegal or void taxes so levied or to be levied as aforesaid, and from assessing or pretending to assess or to approve the assessment of plaintiff's said shares for the purpose of state, county, school district and other local taxation in the year 1935,

or in any similar manner, or any similar method, and from levying or assessing upon or against plaintiff's said shares in the year 1935, or in any succeeding year, any tax or taxes based or computed upon any such pretended assessment, and from collecting or attempting to collect any such taxes, said temporary or interlocutory injunction to remain in full force and effect until the final hearing of this cause; that upon said hearing, said injunction be made permanent.

8. That plaintiff have such other and further relief as the nature of the case may require, and as to the court may seem meet and equitable, and also a decree for its costs herein.

**CHARLES L. RAWLING**

**J. L. GUST**

**RAWLINS AND RAWLINS**

**GUST ROSENFELD DIVELBESS**

**ROBINETTE & COOLIDGE**

**Solicitors for Plaintiff.**



STATE OF ARIZONA, )  
County of Maricopa, ) ss.

J. L. GUST, being first duly sworn on oath deposes and says:

That he is one of the attorneys for The Valley National Bank, of Phoenix, a corporation, the plaintiff named in the above and foregoing Second Amended and Supplemental Bill of Complaint, and is duly authorized to make this verification on behalf of said plaintiff;

That he has read said complaint, and that the allegations therein contained are true of his own knowledge, except such allegations as are made upon information and belief, and those allegations he believes to be true.

J. L. GUST

Subscribed and sworn to before me this 24th day of April, 1939.

ETHOL FROST

Notary Public.

My commission expires February 27, 1940.

(NOTARIAL SEAL)